

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

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UNITED STATES OF AMERICA, * CR 03-40111-4

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Plaintiff,

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* MEMORANDUM OPINION AND
* ORDER DENYING MOTION FOR
* SENTENCE REDUCTION

-vs-

CHITPRASONG AMPHAVANNASOUK, *

*

Defendant.

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Defendant Chitprasong Amphavannasouk filed a letter asking if he is entitled to relief under section 404 of the First Step Act. (Doc. 317.) The Court construed Defendant's letter as a motion for a sentence reduction pursuant to the First Step Act. The Assistant Federal Public Defender appointed to represent individuals who file pro se pleadings seeking relief under Section 404 of the First Step Act responded that "it has no additional materials or information to present to the Court and requests that the Court decide the issues based on the previous submissions by Defendant." (Doc. 321.) The United States objects to Defendant's motion for a sentence reduction. (Doc. 325.)

BACKGROUND

Through a Superseding Indictment (Doc. 1), Defendant was charged with a drug trafficking conspiracy involving methamphetamine. On June 24, 2004, a jury found Defendant guilty of the offense. (Doc. 122.) Defendant was sentenced to imprisonment for 240 months. (Doc. 142.)

LAW REGARDING THE FIRST STEP ACT

On December 21, 2018, the President signed the First Step Act into law. One section of the First Step Act, Pub. L. No. 115-391, § 404, 132 Stat. 5194 (2018), made retroactive some provisions of the Fair Sentencing Act of 2010 (“FSA”), Pub. Law 111-220; 124 Stat. 2372 (2010). The FSA reduced the existing sentencing disparity between crack cocaine and powder cocaine offenses. *United States v. Orr*, 636 F.3d 944, 957 (8th Cir. 2011). Under Section 2 of the FSA, what used to be a 100:1 ratio between the amount of powder and crack needed to trigger the mandatory minimums became an 18:1 ratio. *Id.* Section 3 of the FSA “eliminated the 5-year mandatory minimum for simple possession of crack.” *Dorsey v. United States*, 567 U.S. 260, 269–270 (2012).

Sections 2 and 3 of the FSA provide:

SEC. 2. COCAINE SENTENCING DISPARITY REDUCTION.

(a) CSA. -- Section 401(b)(1) of the Controlled Substances Act (21 U.S.C. 841(b)(1)) is amended--

- (1) in subparagraph A(iii), by striking “50 grams” and inserting “280 grams”; and
- (2) in subparagraph (B)(iii), by striking “5 grams” and inserting “28 grams”.

(b) IMPORT AND EXPORT ACT. -- Section 1010(b) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)) is amended--

- (1) in paragraph (1)(C), by striking “50 grams” and inserting “280 grams”; and
- (2) in paragraph (2)(C), by striking “5 grams” and inserting “28 grams”.

SEC. 3. ELIMINATION OF MANDATORY MINIMUM SENTENCE FOR SIMPLE POSSESSION.

Section 404(a) of the Controlled Substances Act (21 U.S.C. 844(a)) is amended by striking the sentence beginning “Notwithstanding the preceding sentence.”.

Fair Sentencing Act of 2010 §§ 2–3.

Section 404 of the First Step Act of 2018 makes sections 2 and 3 of the FSA retroactive by providing that a court may “impose a reduced sentence as if sections 2 and 3 of the Fair

Sentencing Act . . . were in effect at the time the covered offense was committed.” *See First Step Act* § 404(b). Section 404 provides:

(a) **DEFINITION OF COVERED OFFENSE.** -- In this section, the term “covered offense” means a violation of a Federal Criminal statute, the statutory penalties for which were modified by section 2 or 3 of the Fair Sentencing Act of 2010 (Public Law 111-220; 124 Stat. 2372), that was committed before August 3, 2010.

(b) **DEFENDANTS PREVIOUSLY SENTENCED.** -- A court that imposed a sentence for a covered offense may, on motion of the defendant, the Director of the Bureau of Prisons, the attorney for the Government, or the court, impose a reduced sentence as if sections 2 and 3 of the Fair Sentencing Act of 2010 (Public Law 111-220; 124 Stat. 2372) were in effect at the time the covered offense was committed.

(c) **LIMITATIONS.** -- No court shall entertain a motion made under this section to reduce a sentence if the sentence was previously imposed or previously reduced in accordance with the amendments made by sections 2 and 3 of the Fair Sentencing Act of 2010 (Public Law 111-220; 124 Stat. 2372) or if a previous motion made under this section to reduce the sentence was, after the date of enactment of this Act, denied after a complete review of the motion on the merits. Nothing in this section shall be construed to require a court to reduce any sentence pursuant to this section.

First Step Act of 2018 § 404.

DISCUSSION

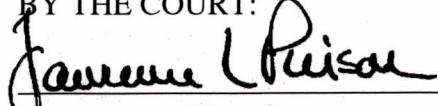
Section 404 is the only First Step Act provision that applies retroactively. *See United States v. Gonzalez-Oseguera*, 2019 WL 1270916, at *1 (D. Haw. March 19, 2019) (stating that “[t]here are a number of reforms in the First Step Act, but Section 404 is the only provision that applies retroactively to defendants who have already been sentenced”). Section 404 permits a federal district court to resentence a defendant based on the FSA’s revised statutory penalties for crack cocaine offenses. *See Gonzalez-Oseguera*, 2019 WL 1270916, at *2 (stating that defendant was not convicted of a covered offense, because defendant was convicted of an offense involving methamphetamine, for which the Fair Sentencing Act’s §§ 2–3 did not modify the statutory penalties). Here, as argued by the government, Defendant was not convicted of a criminal offense involving crack cocaine. Defendant’s offense involved methamphetamine. Courts have denied relief under the First Step Act when the defendant’s drug offense did not involve crack cocaine.

See, e.g., *United States v. Jones*, 2019 WL 1586814, at *1 (M.D. Tenn. Apr. 12, 2019) (citing cases). Accordingly,

IT IS ORDERED that Defendant's Motion for a Sentence Reduction under Section 404 of the First Step Act (doc. 317) is denied.

Dated this 18th day of December, 2019.

BY THE COURT:



Lawrence L. Piersol
United States District Judge

ATTEST:
MATTHEW W. THELEN, CLERK

